

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CLIFFORD SCATES,)	
)	
Petitioner,)	
)	
v.)	No. 4:06CV1713 JCH
)	
ALAN BLAKE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on Scates's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. A review of the record shows that the petition is time-barred by 28 U.S.C. § 2244(d), and the petition shall therefore be dismissed.

Background

On July 12, 1994, Scates pled guilty to two counts of first-degree sexual assault. Care and Treatment of Scates v. State, 134 S.W.3d 738, 739 (Mo. App. 2004). Scates was sentenced to a term of imprisonment, and he was scheduled to be released from prison on October 17, 2000. Id. At 739-40. On September 29, 2000, the state petitioned to have Scates civilly committed as a sexually violent predator (SVP) pursuant to Missouri's Sexually Violent Predator Act, Mo. Rev. Stat. § 632.480, et seq. Id. At 740. A jury trial was held, and the jury found Scates to be an SVP. Id. Scates was remanded to the Missouri Department of Mental Health to be civilly confined at the Missouri Sexual Offender Treatment Center in Farmington, Missouri. Id.

Scates timely filed an appeal. Id. The appellate court affirmed the trial court, and the court's opinion was issued on May 6, 2004. The mandate of the appellate court issued on June 8, 2004.

Scates did not file a motion for rehearing or for transfer to the Missouri Supreme Court. Nor did Scates file any motion for post-conviction relief in the state court. Scates filed two petitions for writ of habeas corpus in this Court, which were summarily dismissed without prejudice. Scates v. Blake, 4:06CV405 JCH (E.D. Mo.) (dismissed March 29, 2006); Scates v. Blake, 4:06CV870 JCH (E.D. Mo.) (dismissed June 30, 2006). Scates filed a petition for writ with the Missouri Supreme Court on October 13, 2006, and the writ was denied on October 31, 2006. Scates v. Black, Case No. 88072 (Mo. 2006). Scates filed the instant petition on November 17, 2006, and Scates filed an amended petition on February 8, 2007.

Discussion

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts provides that a district court shall summarily dismiss a § 2254 petition if it plainly appears that the petitioner is not entitled to relief.

Under 28 U.S.C. § 2244(d):

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

The Missouri Court of Appeals affirmed Scates's SVP conviction on May 6, 2004, and that court's mandate issued on June 8, 2004. Additionally, none of the circumstances listed in § 2244(d)(1)(B)-(D) apply to the instant petition. As a result, the petition is clearly time-barred by § 2244(d).

Accordingly,

IT IS HEREBY ORDERED that Scates's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** as untimely under 28 U.S.C. § 2244(d).

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 9th Day of February, 2007.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE